

February 18, 2003

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEBARMENT HEARING FOR INFORMATION INTEGRATORS, INC.
(ALL DISTRICTS AFFECTED) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Adopt the proposed findings, decision, and recommendations of the Contractor Hearing Board to not debar Information Integrators, Inc. and its principal owners Elena Shur (Shur), Lisa Stotelmyre (Stotelmyre) and Mary Tromp (Tromp), from bidding on, being awarded, and or performing work on projects for the County of Los Angeles.
2. Instruct the Executive Officer, Board of Supervisors, to send notice to Ms. Elena Shur, principal owner, Information Integrators, Inc., advising of your Board's decision not to take debarment action against them and that the business may resume bidding on work for the County of Los Angeles.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommendation in favor of Information Integrators, Inc. (Information Integrators) and its principal owners is to address an allegation of contractor non-responsibility, consistent with process established to ensure the County of Los Angeles (County) contracts only with responsible contractors who comply with all the terms and conditions of their County contracts and with all relevant Federal, State, and local laws.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the County's Vision which supports shared values of integrity, professionalism, and accountability, and envisions the County as the premier organization for those working in the public's interest with a pledge to always work to earn the public trust. The process affords departments and contractors an opportunity for a hearing of the issues before an impartial board.

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FISCAL IMPACT/FINANCING

Not applicable.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Contractor Non-Responsibility and Debarment Ordinance

The Contractor Non-Responsibility and Debarment Ordinance, County Code Chapter 2.202 provides the County with the authority to terminate contracts and debar contractors when the contractor has committed specified offenses that indicate a lack of honesty, business integrity, or capacity to perform County contracts. In considering debarment, the County may consider the seriousness and extent of the contractor's acts, omissions, patterns, or practices and any relevant mitigating factors.

Contractor Hearing Board (CHB) Responsibilities

County Code Chapter 2.202, the Contractor Non-Responsibility and Debarment Ordinance, established the CHB to provide an independent review of the contracting department's recommendation to debar a contractor. The CHB is chaired by a representative from the Chief Administrative Office (CAO) and includes one representative from the Office of Affirmative Action Compliance (OAAC) and the Departments of Internal Services (ISD) and Public Works (DPW), respectively. The CAO is a nonvoting member except in the event the debarment action is initiated by the OAAC, ISD, or DPW. In such instances, the CAO exercises its vote and the CHB member from the department bringing the debarment action must recuse himself/herself from any participation in the hearing. In this particular debarment hearing, the representative from ISD did not sit on the CHB as the debarment action was initiated against an ISD contractor. Therefore, the CAO representative voted.

Information Integrators Alleged Breach of Contract

ISD initiated debarment proceedings against Information Integrators on November 7, 2002, for alleged material breach of the Information Technology Support Services Master Agreement (ITSSMA) arising from subcontracting "time and materials" work orders and misrepresenting those subcontractors as contractor employees. The ITSSMA prohibits subcontracting for "time and materials" work orders and Subparagraph 32 A provides for termination for default when a contractor has violated a provision or has otherwise materially breached the Master Agreement. ISD exercised its right to terminate the ITSSMA, effective August 31, 2002.

On November 7, 2002, ISD sent a certified letter to Shur, notifying her of its intent to initiate debarment proceedings against the company and its principal owner(s) at a hearing scheduled for December 17, 2002 at 1:00 p.m., in Room 374, of the Kenneth Hahn Hall of Administration (Attachment I). At the request of Information Integrators, the hearing was rescheduled for January 22, 2003 at 1:00 p.m., in Room 374, of the Kenneth Hahn Hall of Administration. The hearing was conducted and concluded on January 22, 2003. The proceedings were recorded and an audiotape is available upon request, as well as all documents entered into the record as exhibits during the hearing.

- Attachment II is a listing of the exhibits that were entered into the record.
- Attachment III provides copies of the Certification of Employee Status forms signed by an Information Integrators principal certifying employee status for two subcontractors (the employee listed as Srinivasa Reddi on one form, and Srinivasa Bhimavarapu on another, is apparently the same individual).
- Attachment M is a listing of CHB members, ISD investigators, participating attorneys and witnesses.

FINDINGS

The documentary and testimonial evidence entered into the record before the CHB demonstrated by the preponderance of evidence that Information Integrators and its principal owners violated the terms of the contract with the County and demonstrated a lack of business integrity in representing two subcontractors as contractor employees by submitting forms, signed under penalty of perjury, attesting to their status as contractor employees. **The existence of certain relevant mitigating factors, however, resulted in the recommendation by the CHB against debarment for this contractor.**

1. ISD Allegation of Breach of Contract - ITSSMA Prohibition of Subcontracting for Time and Materials Work Orders

A preponderance of evidence showed that three work orders (Nos. N04-0030, N04-0083, and N04-4047) issued to Information Integrators under ITSSMA No. N97107 (executed February 15, 2000) were performed by subcontractors, rather than contractor employees. Information Integrators and its principal owners, therefore, violated Subparagraph 6.6.2 of the ITSSMA, which specifies:

“CONTRACTOR personnel selected to perform on a “time and materials” work order must be employees of the CONTRACTOR.”

A contractor who uses subcontractors can potentially under bid a competitor who uses its own employees. A business with employees generally has higher costs, e.g., personnel operations, withholding applicable State and Federal income taxes, FICA, unemployment insurance premiums, and potentially other employee benefits. The prohibition against subcontracting levels the playing field for "time and materials" procurements which are based on the lowest responsible bid.

During an on-site audit on June 12, 2002, ISD staff reviewed 36 ITSSMA work orders issued to Information Integrators. The ISD Monitor identified three instances when Information Integrators used two subcontractors to perform the required services. In each instance, Information Integrators had submitted, under penalty of perjury, "Certification of Employee Status" forms for the subcontractors (Attachment III) attesting that:

"1) I am an officer or partner of the CONTRACTOR; 2) The individual(s) named below are employees of this organization; 3) Applicable State and Federal income tax, FICA, unemployment insurance premiums and worker's compensations insurance premiums, in the correct amounts required by State and Federal law will be withheld as appropriate, and paid by CONTRACTOR for the individual(s) named below for the entire time period covered by the attached Work Order."

Further, Information Integrators secured the signatures of the two subcontractors on the required "Contractor Employee Acknowledgement, Confidentiality and Copyright Assignment Agreement" form in which the subcontractors acknowledge that Information Integrators is their "sole employer" for purposes of the work order and responsible for payment of salary and any and all benefits payable for performance of work on the work order.

Shur also openly admitted to the ISD monitor that the two staff in question were subcontractors.

2. Magnitude and Extent of the Contract Breach

There have been 36 work orders associated with the ITSSMA at a total value of \$7,287,274.

A. Testimony from Information Integrators – Mitigating Circumstances

During the CHB hearing, Information Integrators was represented by its three co-owners, Shur, Stotemyre, and Tromp. These co-owners acknowledged their mistake certifying two subcontractors as employees. Stotemyre indicated that the mistake was made during the paperwork intensive "rollover" of work orders issued under an expiring

ITSSMA into the successor ITSSMA. Stotelmyre testified that a staff person had used her signature stamp to complete the numerous forms required for the “rollover” and that the staff was not familiar with the details of the employment status of the two subcontractors in question, particularly because “99 percent” of the company’s staff were employees.

Stotelmyre testified that she believed the County’s concern regarding using subcontractors related to ensuring proper paycheck withholding for mandatory deductions and that this was not a concern with the two subcontractors because they were employees of another company that was withholding the mandatory payroll deductions; they were not independent contractors. Stotelmyre further testified that Information Integrators did not have a price advantage over other competitors because Information Integrators paid a fee to the subcontractors’ companies’ for their services. Stotelmyre further testified that Information Integrator’s bid was not the low bid for the work and that Information Integrators would have hired the two subcontractors from their respective companies, if it believed that was necessary to be in compliance with the ITSSMA.

Information Integrators principals explained that they believed the ISD was aware of, and approved use of, the subcontractors for the three work orders in question because Information Integrators had: 1) secured prior approval to subcontract with one of the subcontractors in question, and 2) inquired to ISD staff about the possibility of contracting with the second subcontractor, submitted a standard subcontract form to ISD, and subsequently received the work order.

- In the first subcontracting instance for work order No. N04-0030, the subcontractor performed work on the initial work order (No. N0-054) that was solicited as “fixed price” under the prior ITSSMA and was subsequently rolled-over into a new ITSSMA, effective May 1, 2000. The rollover work order (No. N04-0030) cited seven completed “fixed price” deliverables and one remaining deliverable to be paid on a “time and materials” basis. Information Integrators testified that the subcontractor for the rollover work order was the same subcontractor approved for the initial work order and was simply continuing to provide service to complete the project. Information Integrators did not believe any additional approval was required because the subcontractor status was known to ISD. They also indicated that in their business, the term “deliverable” meant fixed price.

- In the second subcontracting instance, the same “approved” subcontractor, who provided continuing services on rollover work order No. N04-0030, was also utilized on work order No. N04-0083, which was issued on a “time and materials” basis.
- In the third subcontracting instance for work order No. N04-0047, Information Integrators presented documentation that it had corresponded via e-mail with ISD about the possibility of subcontracting this “time and materials” work order, and followed-up by submitting a standard County Subcontractor Agreement form to ISD for approval. The ISD representatives indicated that they were unaware of receipt of the Subcontractor Agreement, but noted that if they had received it, it would not have been approved because subcontracting is prohibited for “time and materials” work orders, and any ITSSMA subcontracting requires the written approval of the Master Agreement Program Director (MAPD), which was not granted. Information Integrators acknowledged that it did not receive written approval, but testified they believed they had met the County’s requirements since Information Integrators received work order No. 04-0047 and did not receive any indication that the subcontract was not approved.

B. Testimony Regarding Contractor Performance

The CHB requested information from ISD regarding the contractor’s overall performance. ISD indicated that no one was present from ISD to report on contractor performance and that this testimony was not relevant because the request for debarment was based on contract compliance, not performance.

Stotelmyre noted that there were two members of the audience who could testify regarding Information Integrator’s performance. After initial objections by the counsel for ISD, citing lack of prior knowledge or opportunity to prepare for the witnesses, the CHB determined that the witnesses could testify, and that ISD could request a continuance of the hearing to prepare cross-examination, if necessary. ISD acquiesced, stating that it would not object to testimony limited to the overall performance of the contractor. As a result, Jon Fullinwider, County Chief Information Officer, and William McFadden, current MAXIMUS employee and former manager in the County Department of Public Social Services that utilized Information Integrator’s services, testified to the high quality of work performed by Information Integrators. The CHB provided ISD with the opportunity to cross-examine the witnesses and asked again if ISD would require a continuance of the hearing for additional preparation. However, ISD stated that it would not be necessary to continue the hearing.

After considering all of the testimony, and documentary evidence presented at the hearing, the CHB made the following findings:

- Information Integrator's perfunctory signing/stamping the Certification of Employee Status forms under penalty of perjury indicated a lack of business integrity, demonstrated poor business practice, and was inconsistent with the high standards required of County contractors by the Board of Supervisors.
- There were relevant mitigating circumstances in the instances of subcontracting which led the CHB to find that the subcontracting at issue did not support a recommendation to debar the contractor.

The mitigating factors considered by the CHB included:

- The rollover of "fixed price" work order No. 04-0054, which had eight deliverables (seven "fixed price" and one "time and materials") into work order No. N04-0030 with the same approved subcontractor completing work on the one remaining "time and materials" deliverable. The rollover work order No. N04-0030 specifically referenced eight deliverables. As such, the CHB found that there was a reasonable basis for Information Integrators to believe that it was not violating contract terms by continuing to use the approved subcontractor for the initial work order to complete the project. It was also noted that "time and materials" work order No. N04-0083 was also issued to this same known and previously approved subcontractor.
- ITSSMA language which may reasonably cause confusion in regards to the distinctions between "time and materials" and "fixed price" requirements. The provisions were not clearly and separately stated and cross-referenced in the contract. The ITSSMA Section 15, Subcontracting, does not indicate that subcontracting is prohibited for "time and materials" work orders; rather, it indicates that written consent of the County's Master Agreement Program Director is required to subcontract. The prohibition against subcontracting of "time and materials" work orders is to be inferred from Section 6.6.2 which requires personnel selected to perform on a "time and materials" work order to be employees of the contractor. The term "deliverable" is also used inconsistently in reference to "fixed price" and "time and materials" work orders; Section 6.6.2 refers to "time and materials work order" and "fixed price per deliverable work order," the implication being that a "deliverable" is associated with "fixed price" work orders.

- Information Integrator's notification to ISD requesting approval to subcontract on work order No. N04-0047 via submission of the standard Subcontractor Agreement form. Although this form did not reach the appropriate party in ISD, its submission indicates Information Integrator's intent to comply with the ITSSMA requirements, as it understood them.
- Lack of procedures. Procedures at ISD to assure receipt of a subcontract request would have triggered action to identify a potential contract problem before it escalated to ITSSMA termination.
- Absence of an opportunity to explain the basis for contract violations. Had the contractor been given a chance to explain the situation to ISD, corrective action could have been taken which may have avoided further action against the contractor.

3. Recommendation of No Debarment

By a unanimous vote, the CHB recommends that Information Integrators not be debarred. Since termination of its ITSSMA effective August 31, 2002, Information Integrators has had no County work and has lost considerable revenue due to the cancellation of all their work orders, which have since been rebid and awarded to other contractors. Although it does not recommend debarment, the CHB wishes to bring to the Board's attention the lack of business integrity demonstrated by the perfunctory signing of statements representing subcontractors as company employees; however, the CHB found this to be lack of attention to detail and not a conscious attempt to defraud the County.

IMPACT ON CURRENT PROJECTS

The ITSSMA with Information Integrators was terminated effective August 31, 2002. Subparagraph 32.2 of the Agreement provides that:

"County, upon commercially reasonable terms consistent with County procurement policies, may procure goods and/or services equivalent to those so terminated (herein, any and all monetary expenses of doing so are collectively referred to as "Cover Costs"). Contractor shall be liable to County for any and all Cover Costs incurred by County."

No evidence was presented by ISD regarding Cover Costs for rebidding the cancelled work orders. This clause would appear to be inappropriate if your Board adopts the CHB recommendation not to debar.

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CONCLUSION

The Contractor Non-Responsibility and Debarment process is working as your Board intended to help assure that the County contracts only with responsible contractors who comply with all relevant laws, as well as the terms and conditions of their contracts. As noted, the process affords the County department and the contractor an opportunity for a hearing by an independent board. The hearing process has also identified potential areas for County ITSSMA contracting program improvements to promote a better understanding of contracting requirements to improve contractor compliance.

Respectfully submitted,

MARTIN K. ZIMMERMAN
Chair, Contractor Hearing Board
Assistant Division Chief, Chief Administrative Office

MKZ:Nf:nl

Attachments (4)

c: David E. Janssen, Chief Administrative Officer
Dennis A. Tafoya, Affirmative Action Compliance Officer
J. Tyler McCauley, Auditor Controller
Lloyd W. Pellman, County Counsel
Joan Ouderkirk, Director of Internal Services
James A. Noyes, Director of Public Works
Elena Shur, Co-Owner of Information Integrators, Inc.

**LIST OF EXHIBITS ENTERED INTO THE RECORD FOR THE DEBARMENT HEARING
OF INFORMATION INTEGRATORS, INC.**

Internal Services Department:

Debarment brief including:

- ❖ Fact Sheet
- ❖ Termination Letter
- ❖ Master Agreement Contract
- ❖ Audit Summary
- ❖ 16 Exhibits, including work orders and amendments; signed Certification of Employee Status forms for subcontractors; signed Contractor Employee Acknowledgement Confidentiality and Copyright Agreement forms; invoices to Information Integrators from the subcontractors' employers
- ❖ Administrative Status Report
- ❖ Miscellaneous, including notice of the on-site monitoring visit and the debarment hearing

Information Integrators, Inc. (Information Integrators):

- ❖ Exhibit A: FAX from Information Integrators to Kathy Hanks, ISD, dated 8/12/02, Subject: Subcontract Agreement for Srinivasa Bhimavarapu, providing a copy of the subcontract for work order No. 04-0054 that was faxed to ISD 12/23/98.
- ❖ Exhibit B: Copy of e-mail inquiry to ISD regarding the possibility of subcontracting on a time and materials work order
- ❖ Exhibit C: FAX from Information Integrators, to Mark Kabacy, ISD, dated 7/26/00, providing a standard subcontract agreement for work order No. N04-0047, for services by Vahid Shafer (employee of Data Center Agency)
- ❖ Exhibit D: Technical Services Agreement between Data Center Agency and Information Integrators for the services of Vahid Shafer
- ❖ Exhibit E: FAX from Information Integrators to Mark Kabacy, ISD, dated 1/26/99, transmitting copies of required subcontractor forms for Solix Systems, Inc., employer of Srinivasa Bhimavarapu, for work order No. 04-0054, the precursor to No. N04-0030
- ❖ Exhibit F: FAX from Information Integrators to Jo-Ann Craypser, ISD, dated 1/14/03, transmitting copy of FAX sent 9/28/00 with the resume for Srinivasa Bhimavarapu showing current employer as Solix Systems, Inc.
- ❖ Exhibit F1: Letter from Information Integrators to Ms. Jo-Ann Craypser, ISD, dated 9/28/00 transmitting the resumes of three individuals for work orders and specifically identifying Srinivasa Bhimavarapu as a subcontractor
- ❖ Exhibit G: Los Angeles County Debarment Hearing Presentation – 1/22/03

**CERTIFICATION OF EMPLOYEE STATUS FORMS SIGNED BY LISA
STOTELMYRE, PRINCIPAL OWNER OF INFORMATION INTEGRATORS, INC.,
CERTIFYING TWO SUBCONTRACTORS TO BE COMPANY EMPLOYEES**

**PARTICIPANTS IN THE CONTRACTOR HEARING BOARD DEPARTMENT PROCEEDINGS FOR
INFORMATION INTEGRATORS, INC.**

JANUARY 22, 2003

1:00 P.M.

**374 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CA 90012**

CONTRACTOR HEARING BOARD

MARTIN ZIMMERMAN, CHAIR, ASSISTANT DIVISION CHIEF, CHIEF ADMINISTRATION OFFICE
ROBERT VALDEZ, DEPUTY, OFFICE OF AFFIRMATIVE ACTION COMPLIANCE
KERRY VOSBURG, SUPERVISING ADMINISTRATIVE ASSISTANT III, CONTRACTING SERVICES,
DEPARTMENT OF PUBLIC WORKS
NANCY TAKADE, LEGAL ADVISOR TO THE CHB, SENIOR DEPUTY COUNTY COUNSEL

INTERNAL SERVICES DEPARTMENT

LINDA M. NOLAN, MANAGER, CONTRACTS COMPLIANCE SECTION
SANDRA P. ISSAKHANIAN, CONTRACT PROGRAM MONITOR
SUSAN BENAVIDEZ, ITSSMA CONTRACT SUPERVISOR
VICTORIA MANSOURIAN, COUNSEL FOR THE INTERNAL SERVICES DEPARTMENT,
ASSOCIATE COUNTY COUNSEL

INFORMATION INTEGRATORS, INC.

ELENA SHUR, PRINCIPAL OWNER
LISA STOTELMYRE, PRINCIPAL OWNER
MARY TROMP, PRINCIPAL OWNER

WITNESSES FOR INFORMATION INTEGRATORS, INC.

JON W. FULLINWIDER, COUNTY OF LOS ANGELES CHIEF INFORMATION OFFICER
WILLIAM MCFADDEN, MAXMUS AND FORMERLY COUNTY OF LOS ANGELES DEPARTMENT OF
PUBLIC SOCIAL SERVICES